

LICENSE AND CONCESSION AGREEMENT
FOR OPERATION OF:

Beach Snacks and Boat Rental Concession
Deam Lake S.R.A.

PREFACE

Pursuant to IC 14-19-1-2, the State of Indiana (State), provides facilities for the use and enjoyment of the public. The responsibility of the State is to operate or contract for the operation of the facilities so as to maximize service and benefit to the public according to approved standards. The facilities included in this contract are made available to the Licensee (as identified herein) with the intent that the Licensee will operate them according to those standards of maximum use, service, and benefit to the public and also in a manner that does not impact the State adversely in any way.

It is fully understood that this contract for the operation of _____ (the "License") to the Licensee by the State DOES NOT GRANT EXCLUSIVE RIGHTS to the ENTIRE PROPERTY where the concession is located. This License does grant rights to the Licensee to provide goods and services specified under Section D(1) for the areas specified under Section B(5). It is also understood that the State is charged with the management of the property and shall make all decisions as to which concessions shall or shall not be located on the property and where these concessions shall be located.

This contract is entered into by and between the State and _____, ("Licensee").

A. Grant of License

1. Parties

The State, in consideration of the covenants, stipulations and representations made in this License, grants to:

Name: _____

Address: _____

Telephone number at concession: _____

Telephone number at home: _____

B. Conditions

1. License Term

The "License Term" shall begin _____ and end _____.

At the option of the State, this License may be renewed for a period of one or additional year.. If this option is exercised, the State will notify the Licensee in writing on or before December 31, 2013.

2. Licensee Fee

The fee payable ("License Fee") by the Licensee to the State for the rights and privileges conveyed in this License shall be as follows:

a. A sum equal to the percentages indicated below of the gross income of the business. Payment of the License Fee shall be the first charge among all operating expenses incurred and shall be received in the State office on or before the eighth (8th) of each month for the preceding calendar month or it shall be paid at such other times for such other periods as the State may direct.

The License fee shall be:

- b. License fees due and payable to the State which are not paid in accordance with this section of the License shall bear and accrue interest daily, until paid, at the rate of 1 ½% per month, or a late fee of \$50.00, whichever is greater. Repeated violations of this section may result in the termination of this license by the State as provided in Section W(3) of this License.

3. Gross Income

Gross income shall be the total amount of all receipts in cash, credits, property, or interest of whatever kind received by the Licensee from all business done under the provisions of this License; but, it shall not include deferred credits, internal sales, sales tax receipts, not other taxes which may be required to be collected from guests, nor any part of the receipts which constitute repayment by guests of monies advanced on their behalf and for their convenience by the Licensee.

4. State's Building and Equipment

The State has provided the below listed buildings, grounds and items of equipment for the use of the Licensee in this concession. The Licensee is responsible for the maintenance of those buildings, grounds and items of equipment during the License Term and shall return them to the State at the termination of the License term in a condition equivalent to that in which the Licensee received them.

The Licensee agrees to accept the equipment on an as-is basis. Any repairs required shall be at the sole expense of the Licensee. The Property Manager shall remove any items of equipment that the Licensee does not wish to accept from the concession location, in a timely manner. The State shall not be responsible for any loss of product or sales due to the malfunction of any equipment owned by the Department.

BOAT RENTAL: *One boat rental building, 50 boats with 66 oars, and vests as available from the Property Manager.* **BEACH SNACKS:** *One beach snack building, one four-door freezer and one two door freezer.*

5. License Area

The area included within this License shall be: **BOAT RENTAL:** *A fifty-foot (50') area surrounding the boat rental building, parking lot, dock area, and each vending machine installed.* **BEACH SNACKS:** *A fifty-foot (50') area surrounding the beach snack building including the beach area. The Licensee is responsible for keeping these areas clean and free of litter.*

6. Visitation

The State does not guarantee a specific number of visitors to the property and accepts no responsibility for the lack of visitors for any reason.

7. Operating Schedule

The Licensee shall keep the concession open and available for use by the public in accordance with the following schedule. The State or Division of State Parks & Reservoirs Director, or their designees must approve any deviation from the schedule in advance and in writing, unless circumstances beyond the control of either party make it necessary to take emergency action. In emergency situations, the Licensee must report the circumstances to the property manager immediately and in writing to the State as soon as practicable. In the case of inclement weather, and with the property manager's approval, the concession may close early.

The Property Manager shall keep the concession open and available for use by the public in accordance with the following schedule, unless the Director of State Parks & Reservoirs makes a written or verbal determination that funds are not appropriated or otherwise available to support the agreed upon schedule. The Property Manager shall notify the concessionaire at his/her earliest convenience so that the concessionaire can make any necessary changes to the operation of the concession.

The minimum hours and days of operation shall be: **BEACH SNACKS: Memorial Day weekend to start of school – Daily 11:00am to 6:00pm. Start of school through Labor Day weekend – Weekends only: Friday 2:00pm to 6:00pm; Saturday and Sunday 11:00am to 6:00pm**
BOAT RENTAL: Beginning second weekend in May and go through Labor Day weekend --Monday through Friday 11:00am to 6:00pm; Saturday 10:00am to 6:00pm; and Sunday 11:00am to 6:00pm

The Licensee may operate longer hours than indicated above without receiving the property manager's permission. However, the Licensee must not operate before or after the dates indicated above and in Section B(1), "License Term", unless specifically authorized by a contract amendment executed by all required signatories.

8. Posting of Operating Schedule

The Operating Schedule of this concession shall be at the gatehouse, the park office, the park bulletin boards, and in an open and public location at the concession site posted no later than the first day of operation of the concession.

C. Licensee's Assurances

1. Indemnification

The Licensee agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Licensee and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Licensee.

2. Evidence of Ability

The Licensee assures competence and financial ability to perform the work contemplated in the License and agrees, upon request, to furnish the State with evidence of competency and financial ability before the granting of the License, and anytime during the period of this License.

3. No Unnamed Partners

The Licensee assures there are no unnamed partners legally interested in or having authority over the operation or management of the concession and further assures that the Licensee is solely responsible for carrying out the duties of this License. The License is not assignable, either in whole or in part, nor shall it be sub-leased, sub-licensed, or transferred by the Licensee. If the Licensee attempts to sub-lease, sub-license or transfer the License, the State may terminate the License.

4. Status of Licensee

The License does not vest in the Licensee any title, tenure or any property belonging to the State located on or around the premises to be occupied by the Licensee or anyone employed by the Licensee.

5. Independent Licensee

Both parties hereto, in the performance of this contract, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subLicensees of the other party.

The Licensee shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Licensee's employees.

6. Contracts

The Licensee may execute contracts or agreements as the manager of the business authorized under the terms of the License. The contracts or agreements must be worded so as not to obligate the State and must contain a provision for automatic termination upon the termination of **this** License. Furthermore, if soft drink vending is covered by this agreement, Licensee, in any and all of its contracts or agreements with providers of such soft drinks, must include a provision for automatic termination of such contracts or agreements in the event that the State enters into a contract of exclusivity with a specific provider of soft drinks. The Licensee shall indemnify, defend and exculpate the State from any liability, which may accrue or be asserted against the State under such contracts or agreements.

D. License Administration

1. Scope of License

The concession granted under the provisions of this License is as follows: : **BOAT RENTAL--** *The right to rent Department-owned boats, oars and life vests.* **BEACH SNACKS--** *The right to sell soft drinks, ice cream novelties, nachos w/accessories, hot dogs, chips, pretzels, firewood, camping and fishing supplies, ice, pre-packaged food items, postcards, beach items such as towels, pails & shovels, suntan products, gift and souvenir items and other items as approved by the Property Manager. Licensee has the right to sell limited horse-related items, excluding tack and the right to drive through the campground to sell firewood and ice.*

If food sales are permitted under this agreement, food may be prepared only if the Licensee provides at least the minimum facilities necessary for the safe preparation and service of foods in accordance with IC 16-42-5. Licensee must request and obtain the approval of the Assistant Director of Inns and Concessions and the Indiana Department of Health prior to installation and use of such food facilities.

If the sale of firewood is covered by this agreement, all natural wood offered for sale in packaged form in quantities less than 16 cubic feet (1/8 cord) shall display the quantity in terms of cubic feet, to include fractions of cubic feet. Licensee agrees to comply with relevant provisions of 410 IAC 12-1-1.3 in the sales of such firewood. Licensee will only be allowed to sell firewood that has been inspected by the Division of Entomology and is on the state compliance list or has been inspected and carries the USDA approval stamp.

2. Vending

Vending machines should blend into each property's natural surroundings. All efforts shall be made by the concessionaire to achieve this directive.

3. Quality of Merchandise

The Licensee shall exhibit good taste in offering items for sale, which will reflect in a positive manner toward the State. Efforts shall also be made to provide items, which reflect natural, cultural and historical aspects of the State of Indiana. The State reserves the right to remove any items during site visitations, which the State deems do not reflect a positive image for the State.

4. Prohibited Merchandise

The Licensee agrees by the acceptance of the License not to offer for sale-prohibited merchandise. Prohibited items include, but are not limited to, those listed below. The Assistant Director of Inns and Concessions may add items to the list upon written notification to the Licensee.

PROHIBITED ITEMS:

- No flotation devices such as air mattresses, beach balls, water wings, or life jackets (unless Coast Guard approved)
- No ice picks, hatchets, axes, machetes, or darts
- No fireworks, exploding items, or noise makers of any kind
- No firearms or ammunition, no BB or CO2 powered devices, sling shots, bows and arrows or trapping devices
- No alcoholic beverages, "mock tails", or controlled substances
- No gum at waterfront concessions (re: bubble, chewing, blow pops, etc.)
- No yard darts
- No suggestive plaques with off-color sayings, or other such items
- No item which can be used to inflict injury on another person or break or deface State properties
- No items such as "Fanny Whackers" or "Whoopie Cushions"
- No items such as animal pelts or skins, claws, feathers or skeletons
- No Styrofoam products shall be used or sold by the concession
- No environmentally unfriendly paper products shall be used or sold by the concession. All paper products possible, such as toilet tissue, paper towels, etc., shall be made of recycled materials.
- No improper use, disposal, or sale of environmentally unsafe chemicals shall occur. Much care will need to be used to read labels for proper use and disposal.

5. Cash Register and Tapes

The Licensee shall furnish at least ___cash register(s) equipped with the following cash control features:

- a. Cumulative, Non-Resettable Totals – originally designed, or mechanically adapted, with “tied-up” totals. Totals that cannot be reset with a key or otherwise.
- b. Audit Tape – shall include provision for printing of total-to-date (sub-total) on itemized tape (Sales Journal).
- c. Sales Indication Window – visible from both sides.
- d. Closed-Drawer Operation – originally designed or mechanically adapted to closed-drawer operation only. Not convertible to open-drawer operation with a key or otherwise.

Cash registers shall be kept in full view of the public. Sales shall be registered in the presence of the customer. All cash register journal tapes shall be sent to the State, Division of State Parks & Reservoirs, with the applicable monthly report and the Employee Cash Count Receipts (DNR 92). All cash, long or short, shall be entered on the monthly report.

A State representative must approve the cash register furnished by the Licensee.

6. Non-Resettable Reading Totals

At locations where it is deemed feasible by the Assistant Director of Inns and Concessions for the operation of a cash register with the above listed features, the Licensee and a representative from the property shall take a reading from the non-resettable totals when the concession both opens and closes for the season. These readings will be sent to the Assistant Director of Inns and Concessions to be filed with the Licensee's file.

7. Pre-numbered Tickets or Receipts

If the State determines the requirements for cash register equipment described in Section D (5) are not practical, the Licensee shall issue a receipt or pre-numbered ticket. If the State approves the use of a receipt, such receipt form shall be supplied by the State and charged to the Licensee. If pre-numbered tickets approved by the State are used, the Licensee shall account for all pre-numbered tickets.

8. Use of Form DNR 92

An Employee's Cash Count and Department Receipt (Form DNR 92) shall be written at the end of each shift or daily to cover all receipts for the period. The original is to be given to the employee and the duplicate copies of all Form DNR 92's issued during the month shall accompany the monthly report to the State.

9. Monthly Reports

By the eighth (8th) day of each month, the Licensee shall have in the State office a monthly report for the preceding calendar month showing all income, the Employee Cash Count Receipts (DNR 92), which shall be used for each day of operation at each location, and the corresponding cash register tapes or DNR 352 receipts, whichever is appropriate to the operation. All overages and shortages shall be entered on the monthly report. All sums due to the State shall be attached to the monthly report in the form of checks made payable to the State of Indiana. The required forms supplied by the State shall be charged to the Licensee.

10. Accounting Records

Regardless of the method of payment of the License Fee, the Licensee shall keep or cause to be kept accurate books, records, and accounts of its operations under the License separate and apart from other operations. The Licensee shall make all reports concerning the operation available to the State at such times at the State may require. Separate accounting records shall be maintained for each facility operated under the terms of this agreement.

Books and records of account shall be kept in a form and manner satisfactory to the State. The Licensee's records of operation shall be open to inspection and audit by the State and its designated representative at all reasonable times during business hours. The right of inspection and audit shall exist during the term of the License Agreement and for a period of three (3) years after the term of the License.

11. Audits

The Licensee acknowledges that it may be required to submit to an audit of funds paid through this License. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.*, and audit guidelines specified by the State.

Following the expiration of this License, the Licensee shall arrange for a financial and compliance audit of funds provided by the State pursuant to this License. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Licensee is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Licensee's fiscal year. Licensee agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Licensee, and not of a parent, member, or subsidiary corporation of the Licensee, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this contract and that the Licensee is not out of compliance with the financial aspects of this License.

12. Lien and Inspection

To secure the payment of the License Fee, and/or damages the State is given a lien on all personal property belonging to the Licensee, which may be located on the premises licensed and used in the operation of the business conducted under the License and Licensee hereby authorizes the State to file a Financial Statement, UCC-1. The State reserves the right to enter the licensed premises, without prior notification, at any time for inspection and/or investigative reasons. This includes, but is not limited to, the right to install and operate surveillance equipment in or on the premises within the licensed area. Evidence obtained through personal, mechanical, and electronic or any other technological or other means may be used by the State in civil and/or criminal actions brought against the Licensee.

13. Utilities

The Licensee shall pay all electric current, water, sewage, and other utilities used in or about the concession when billed either by the State or by any utility company. For utilities with a fixed rate, that rate shall be: ***BOAT RENTAL: BEACH SNACKS:***

14. Taxes

The Licensee shall pay all federal, state, or local taxes, assessments, or fees which are, or which may become, legally chargeable to the business operated under the terms of the License.

15. Advertising

The Licensee is encouraged to conduct a balanced advertising effort directed at developing more business under the provisions of the License. All contracts, scripts, texts, and layouts must be submitted to the Assistant Director of Inns and Concessions for written approval prior to execution or implementation.

The Licensee agrees not to advertise in any manner or form, on or about the property, premises, buildings, or space licensed, or elsewhere, or in any newspaper or otherwise, except by means of signs or forms of advertising approved by the State. The Licensee shall not employ or use any person known as “hawkers”, “spielers”, “criers”, or other noisemakers or means of attracting attention to the Licensee’s business.

E. License Operation

1. Standard of Performance

The Licensee shall give the business daily personal supervision and shall either be present at the concession at all times that it is open for business or shall be represented by a responsible adult person. The Licensee shall establish, maintain, and operate the concession in such manner as to provide the prescribed services to the public according to the best standards prevailing for a similar business.

Standards and rules for sanitation and safety, include, but are not limited to those established by the Indiana State Board of Animal Health, the Department of Health, the Department of Agriculture, and the State Fire Marshal.

2. Licensing Standards

The Licensee, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Licensee pursuant to this License. The State will not pay the Licensee for any services performed when the Licensee, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Licensee shall notify the State immediately and the State, at its option, may immediately terminate this License.

3. Employment Eligibility Verification

The Licensee affirms under the penalties of perjury that he/she does not knowingly employ an unauthorized alien.

The Licensee shall enroll in and verify the work eligibility status of all his/her newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Licensee is not required to participate should the E-Verify program cease to exist. Additionally, the Licensee is not required to participate if the Licensee is self-employed and does not employ any employees.

The Licensee shall not knowingly employ or contract with an unauthorized alien. The Licensee shall not retain an employee or contract with a person that the Licensee subsequently learns is an unauthorized alien.

The Licensee shall require his/her sub-contractors, who perform work under this contract, to certify to the Licensee that the sub-contractor does not knowingly employ or contract with an unauthorized alien and that the sub-contractor has enrolled and is participating in the E-Verify program. The Licensee agrees to maintain this certification throughout the duration of the term of a contract with the sub-contractor.

The State may terminate for default if the Licensee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

4. Debarment and Suspension

- A. The Licensee certifies by entering into this License that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this License by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this License means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Licensee.
- B. The Licensee certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this License and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Licensee shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this License.

5. Non-discrimination

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Licensee or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Licensee covenants that it shall not discriminate against any employee or applicant for employment relating to this License with respect to the hire, tenure, terms,

conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Licensee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

6. Rates, Prices, Charges

Ten (10) days before opening the concession, the Licensee shall submit to the Assistant Director of Inns and Concession for approval, a listing of the prices, rates, and charges proposed for use in the operation of this concession. If practicable, such prices shall be no higher than prices charged for similar merchandise in the locality in which the License is operated. In any event, such prices shall be within the guidelines established by the Natural Resources Commission. The Licensee shall maintain on public display a neat and legible sign showing the approved prices, rates, and charges for the sale of goods.

7. Drug-Free Workplace Certification.

The Licensee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Licensee will give written notice to the State within ten (10) days after receiving actual notice that the Licensee or an employee of the Licensee in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this License and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this License is in excess of \$25,000.00, the Licensee hereby further agrees that this License is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a license shall be made, and no license, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Licensee and made a part of the license or agreement as part of the license documents.

The Licensee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Licensee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Licensee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the

statement; and (2) notify the Licensee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

8. Alcohol

At no time shall the Licensee or employee sell, display, store, or consume alcohol on the License area. Failure to comply with this provision may result in immediate termination of the License.

F. Maintenance

1. Sanitation and Cleanliness

The Licensee shall perform cleaning and janitorial services within the License area. These services include, but are not limited to, the cleaning of all floors, windows, and fixtures, and the replacement of light bulbs. The Licensee shall collect and deposit, in approved sanitary containers for disposal by the State's representative, all garbage, waste, and debris from the building and grounds within and surrounding the concession. The Licensee shall keep the premises occupied under the License in a clean and sanitary condition and in conformity with standards and rules for sanitation and public health. The Licensee agrees to either pay, as billed by the property manager, the cost of trash removal for the licensed area, or remove trash from the property in another fashion agreed upon by the State.

The Licensee shall maintain standards of cleanliness, which will reflect favorable public opinion on the Licensee and the State. The State may perform or have others perform the duties of the Licensee under this Section, if the State determines the Licensee has failed to maintain an acceptable standard of cleanliness. The Licensee shall pay the cost of such work, whether performed by the State or by others, at the discretion of the State.

If the State determines the need for cleaning after the Licensee returns the facility, the Licensee must reimburse the State for all costs incurred for such cleaning.

2. Maintenance of Buildings and Fixtures

The Licensee shall maintain, keep in repair and redecorate, whenever necessary, the interior of the buildings and shall maintain and keep in repair all fixtures, furnishings, and equipment of the State provided for use of the Licensee, including, but not limited to, plumbing, heating, and electrical

equipment. The maintenance, repair, and decorating of the interior of all buildings and the maintenance and repair of plumbing, heating, lighting, and other fixtures shall be done by the Licensee to the approval and satisfaction of the State.

The Licensee shall keep all drainage and sewer lines serving the concession in working condition.

3. Supervision by Property Manager

The State is responsible for the general management of the area on which this concession is located. The day-to-day operation of the License, with respect to the quality of service rendered, hours the concession is open, sanitation, exterior building maintenance and other operational matters as the State may designate shall be determined by the property manager.

4. Recycling

The Licensee shall make an aggressive and affirmative effort to implement the use and sale of recyclable or biodegradable items including, but not limited to, paper plates, cups, napkins, and non-toxic cleaning supplies. Trash shall be separated into types of recyclable materials: glass, paper, metal, plastic, aluminum, and disposed of appropriately.

The plastic rings on 6-pack cans will each be cut before disposal to prevent small animals from getting caught in them, which causes injury or death.

G. Equipment and Supplies

1. Conduct of Business

The Licensee agrees to conduct and use the licensed premises for no other purposes than those stated in this License.

2. Equipment

The Licensee agrees to equip the concession at the Licensee's own expense with items of equipment as directed by the Assistant Director of Inns and Concessions.

3. Disposition of Equipment and Supplies

Upon the termination of this License for any reason, the State, or any person designated by the State, shall have the first option to purchase from the Licensee all on-hand supplies and equipment of the Licensee at the original cost or at their market value, whichever is less. However, the State or such designated persons are not obligated to purchase such items.

4. Coin Operated Amusement Machines

The Licensee shall not permit or provide for the installation of mechanical rides, pinball machines, coin-operated amusement machines, jukeboxes, (music boxes, record players), or similar devices in or about the licensed premises.

5. Alteration of Equipment

The Licensee shall not install, move, or alter any permanent or temporary equipment belonging to the State in or about the concession area. The Licensee shall not modify water supply lines, waste lines, electric lines, or other utility, machinery, or fixtures except upon written permission from the State.

6. Vending Equipment

The Licensee shall secure the written approval of the Assistant Director of Inns and Concessions prior to the installation on the concession area of any vending equipment not owned by the State. The plan of operation of vending equipment, including the percent of revenue paid to the State, shall be on a basis satisfactory to the State. Revenue shall be entered on the records in the same manner as other revenue is reported.

H. Employees

1. Employment

The Licensee shall employ such persons as may be proper to operate the concession in accordance with state and federal labor laws. Personnel records shall be located at the concession or at another location as approved by the Department and open to Department inspection at any time during the License term and for a period of one (1) year after the expiration or termination of this License.

2. Moral Conduct

As this concession operation is located on property owned or managed by the State of Indiana through the Department and because there is a high recognition and correlation between the services provided and the Department, the Department has a supreme interest in the quality of service provided and the appropriateness of behavior occurring on and off the premises. As such, the Licensee shall operate the concession in a business-like manner and must maintain a high standard of conduct by the Licensee and his/her employees, volunteers, and agents.

The Licensee shall prohibit any behavior that violates any federal, state, or local laws, regulations, and ordinances or that fails to conform to a reasonable standard of good conduct. Furthermore, any serious act of misconduct by either Licensee or his/her employees, volunteers or agents including but not limited to: dishonesty; theft, misappropriation, or abuse of State property; moral turpitude; or any act that neglects, injures, abuses, or endangers others or that is either prejudicial to or reflects adversely upon the Department or the State of Indiana is prohibited. Failure by the Licensee to take action to either correct or stop such behavior or misconduct may be considered a material breach of this agreement; and may be grounds for immediate termination, in addition to any other remedies available to the Department. Licensee shall be responsible for conducting background checks of personnel employed in Licensee's operation. Licensee shall not use or employ persons in Licensee's operation who have a history of anti-social behavior regardless of where such person's anti-social behavior may have occurred.

Licensee shall report any allegation or act of misconduct to the Department by contacting the Property Manager or another person higher in authority in the chain of command of the landholding division responsible for the property. In the event of an allegation of misconduct against either the Licensee or his/her employees, volunteers, or agents, the person or persons who are the subject of the allegation shall be immediately removed from the premises pending resolution of the matter. Licensee shall cooperate with the Department in carrying out the decision that resolves the matter.

3. Appearance

Employees of the Licensee coming in contact with the public shall be neat and clean. Employees shall be identifiable by the public. A representative of the State shall approve uniforms.

4. Training

To promote the facilities of the State of Indiana and to provide quality service to the public, employees of the Licensee must receive thorough training. Concession operators and their employees must attend seasonal training programs on those properties, which have them. Training programs shall acquaint personnel with information about the property and information to disseminate to the general public.

Employees are expected to have basic first aid training and know who to contact in case of an emergency. Any accident to a patron must be reported to Property Management and an Accident Report filed.

5. Parking

The Licensee and all employees of the Licensee shall park in areas designated by the property manager. The designated parking area may be changed by the State to facilitate construction or to protect the public or the property. The State is not responsible for damage or theft to vehicles of the Licensee or the Licensee's employees.

I. Bonds and Insurance

1. Worker's Compensation

The Licensee shall, as a condition precedent to entry of this License, furnish the Department with a certificate from the Worker's Compensation Board showing that the Licensee has complied with the provisions of IC 22-3-2 through IC 22-3-6. The State must receive this certificate prior to the opening of the concession or the concession shall not open.

2. Public Liability Insurance

A. The Licensee shall secure and keep in force during the term of this License, the following insurance coverage, covering the Licensee for any and all claims of any nature which may in any manner arise out of or result from Licensee's performance under this License:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of **\$700,000** per person and \$2,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this License.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$2,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. The Licensee shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this License and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this License involve work outside of Indiana.

B. The Licensee's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Licensee.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Licensee in excess of the minimum requirements set forth above. The duty to indemnify the State under this License shall not be limited by the insurance required in this License.
4. The insurance required in this License, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this License may be deemed a material breach of license entitling the State to immediately terminate this License. The Licensee shall furnish a certificate of insurance and all endorsements to the State before the commencement of this License.

3. Surety Bond

The Licensee shall, as a condition precedent to entry of this License, furnish the State with a surety bond conditioned upon faithful performance of the Licensee under this License. The amount of the bond shall be determined by the following schedule.

If the gross sales for the preceding season was:

- ___ up to \$50,000.00, the bond shall be \$5,000.00.
- ___ from \$50,001.00 to \$100,000.00, the bond shall be \$10,000.00.
- ___ \$100,001.00 and up, the bond shall be \$15,000.00.

The Assistant Director of Inns and Concessions must approve the surety bond before the License is deemed to have complied with this provision. The concession shall not open until this bond is received by the State.

In lieu of the Surety Bond, the Licensee may provide a cash bond to the State in the form of a Certificate of Deposit. This certificate must be written in the name of the State and will be held by the State until the end of the License term and the complete payment of monies owed to the State has been made. Upon this successful completion, the State shall return the certificate to the Licensee. If the Licensee exercises this option in lieu of providing a surety bond, the face value of the certificate shall be in the same amount as the required bond as indicated above, and be in the possession of the State before the Licensee will be allowed to open for business.

In lieu of the Surety Bond or cash bond in the form of a Certificate of Deposit, the Licensee may provide the State advanced payment of the License fees. The amount of the advanced payment shall be determined by the Assistant Director of Inns and Concession and shall be payable before the concession is allowed to open for the season. Monthly reports as described under Section D(10), shall still be required to be completed and sent to the Assistant Director of Inns and Concessions as directed under the terms of Section B(2). The monthly License fee shall be deducted from the advanced payment held by the State.

If the advanced payment amount is depleted, the Assistant Director of Inns and Concessions may require an additional advanced payment. Any unused balance at the end of the season will be refunded via a claim voucher submitted by the Licensee to the State. The amount of the initial advanced payment shall be \$____.

J. Damages

1. General Conditions

This License has been established to provide services, goods, or both to the general public and the citizens of the State of Indiana. The Licensee's failure to comply with the various provisions of the License may cause a loss of services or goods to those visitors, and also may cause untimely delays in the administration of this License, depriving the State of the agreed upon services or causing loss of revenue. The Licensee's failure to comply with the provisions of this License, will subject the Licensee to a system of damages as stated below.

2. Violations

Violations, which occur in any Section of the License, may result in untimely delays in the administration of the License or a loss of services to the public. The Licensee will be provided with a written notification stating which provision has been violated and how the stated violation must be corrected. If the violation has not been corrected by the date specified, the Licensee agrees to pay the State damages in the sum specified in the notification. If the violation is still not corrected, additional damages may be assessed. Continued failure to correct this violation may result in immediate termination as described in Section W(3).

The system of progressive liquidated damages is supplemental to and not in lieu of the Licensee performing according to the License provisions and multiple violations may be grounds for immediate termination of the License. The State reserves the right to waive damages without waiving any other remedy available to the State. The decision of the State is final. Violations of the above listed Sections may be cause for the State to terminate the License immediately, examples of which include, but are not limited to, discourteousness to the public, insurance cancellation, bond cancellation, alcohol abuse, animal neglect and other circumstances which could cause harm to the public or the State, or reflect adversely on the State.

3. Failure to Open

The Licensee shall be in full and complete operation with a full staff of employees on the first day of the term of this License as provided in Section B(7) of this License. If the Licensee is not in full operation on that date (except for causes wholly beyond the control of the Licensee and not involving neglect by the Licensee), this License, at the option of the State, may be terminated without notice. Upon termination, the State may re-enter the premises and obtain a new Licensee for the operation of the facilities. In addition, the State may assess liquidated damages of \$50.00 per day, per facility for each day that any facility remains out of service because of non-performance by the Licensee.

K. Governing Laws Clause

This License shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

L. Compliance with Laws

The Licensee shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this License shall be reviewed by the State and the Licensee to determine whether the provisions of this License require formal modification.

- A. The Licensee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Licensee is not familiar with these ethical requirements, the Licensee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Licensee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this License immediately upon notice to the Licensee. In addition, the Licensee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- B. The Licensee certifies by entering into this License that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Licensee agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Licensee. Additionally, further work or payments may be withheld, delayed, or denied and/or this License suspended until the Licensee is current in its payments and has submitted proof of such payment to the State.
- C. The Licensee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Licensee agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this License.
- D. If a valid dispute exists as to the Licensee's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Licensee, the Licensee may request that it be allowed to continue, or receive work, without delay. The Licensee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.
- E. The Licensee warrants that the Licensee and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this License and grounds for immediate termination and denial of further work with the State.
- F. The Licensee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- G. As required by IC 5-22-3-7:
 - (1) The Licensee and any principals of the Licensee certify that:

- (A) the Licensee, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC 24-5-12 [Telephone Solicitations]; or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Licensee will not violate the terms of IC 24-4.7 for the duration of the License, even if IC 24-4.7 is preempted by federal law.
- (2) The Licensee and any principals of the Licensee certify that an affiliate or principal of the Licensee and any agent acting on behalf of the Licensee or on behalf of an affiliate or principal of the Licensee
- (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the License, even if IC 24-4.7 is preempted by federal law.

M. Security and Privacy of Health Information

The Licensee agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this License, to maintain compliance throughout the life of this License, to operate any systems used to fulfill the requirements of this License in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Licensee covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Licensee in the course of its work under this License. The Licensee agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

N. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

O. Substantial Performance

This License shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

P. Waiver of Rights

No right conferred on either party under this License shall be deemed waived, and no breach of this License excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this License shall be construed to operate as a waiver of any rights under this License or of any cause of action arising out of the performance of this License, and the Licensee shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Licensee's negligent performance of any of the services furnished under this License.

Q. Registration with the Secretary of State of Indiana

Pursuant to IC 5-22-16-4, the Licensee certifies that if it is a non-domestic entity, it is registered with the Indiana Secretary of State to do business in the State of Indiana.

R. No Investment in Iran

As required by IC 5-22-16.5-13, the Licensee hereby certifies that the Licensee is not engaged in investment activities in Iran.

S. DNR Regulations

The Licensee shall adhere to all DNR General Property Regulations as found in 312 IAC 8, 312 IAC 5, and 312 IAC 9, and successor regulations. These rules and regulations are duly promulgated pursuant to IC 4-22-2 and have the force and effect of Law. This paragraph is in conjunction with and not in lieu of paragraph L above.

T. Force Majeure

In the event that either party is unable to perform any of its obligations under this License or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this License shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this License.

U. Disputes

- A. Should any disputes arise with respect to this License, the Licensee and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Licensee agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this License that are not affected by the dispute. Should the Licensee fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Licensee as a result of such failure to proceed shall be borne by the Licensee, and the Licensee shall make no claim against the State for such costs.
- C. If a party to the License is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to

resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Licensee and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Licensee of one or more invoices not in dispute in accordance with the terms of this License will not be cause for the Licensee to terminate this License, and the Licensee may bring suit to collect these amounts without following the disputes procedure contained herein.

V. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

1. The individual executing this License;
2. An individual who has an interest of three percent (3%) or more of Licensee, if Licensee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The State may cancel this License without recourse by Licensee if any interested party is an employee of the State of Indiana.

C. The State will not exercise its right of cancellation under Section B above if Licensee gives the State an opinion by the Commission indicating that the existence of this License and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The State may take action, including cancellation of this License consistent with an opinion of the Commission obtained under this section.

- D. Licensee has an affirmative obligation under this License to disclose to the State when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts, which Licensee knows or reasonably could know.

W. Termination

1. If this License is terminated before completion of the License Term, the Licensee shall vacate the premises within 7 days of termination unless a lesser period of time is provided by court order. Licensee and/or his agents shall remove no personal property on which the State is given a lien from the License Area unless otherwise directed by court order, until all License Fees and other sums owed to the State have been paid.

2. If an Act of God renders this License inoperable for more than 60 days, this License shall automatically terminate as of the date of that Act. The State shall receive its License Fee on all income to the date of termination, or to the date of 60 days after termination, whichever income is greater, as if the License Term were then completed.

3. If the Licensee fails to make timely cure of repeated violations, the Director may terminate this License upon written notice of such termination by certified mail, or this notification may be delivered in person. The State shall receive its License Fee on all income to the date of termination as if the License Term were then completed. The Licensee shall further pay to the State, as liquidated damages for breach of performance and for future performance, the sum of \$1,500.00. This sum, plus any License Fees or other amounts owed to the State shall be paid to the State within 15 days of such termination.

4. If the Licensee terminates this License, the provisions relating to disbursement of income and liquidated damages in Section W(3) shall apply. If, however, the Licensee gives written notice, by certified mail, to the State at least 30 days prior to the date of termination, the amount of liquidated damages shall be \$800.00 and not \$1500.00. This fee and all License Fees shall be paid at the time of termination.

5. If the Licensee dies or becomes incapacitated, the License may be deemed terminated by the State and the provisions relating to the disbursement of income in Section W(1) shall apply, or, at its discretion, the State may authorize the estate, guardian, or conservator of the Licensee to operate the facilities under the terms of this License until completion of the License Term.

6. The State may, in cases where continued operation by the Licensee may result in significant or irreparable harm to the State and/or the public, terminate this License immediately. Examples include, but are not limited to the following acts by Licensee or Licensee's employees, volunteers or agents: non-payment of fees, discourteousness to the public, insurance cancellation, bond cancellation, alcohol abuse, animal neglect; behavior that violates any federal, state, or local laws, regulations, and ordinances or that fails to conform to a reasonable standard of good conduct; any serious act of misconduct, as determined solely by the Department, by either Licensee or his/her employees, volunteers, or agents including but not limited to dishonesty; theft, misappropriation, or abuse of State property; moral turpitude; or any act that neglects, injures, abuses, or endangers others or that is either prejudicial to or reflects adversely upon the Department or the State of Indiana, including such conduct that occurs either on or off the premises. All fees payable to the Department shall be paid within 15 calendar days of such termination along with a liquidated damages sum of \$1,500.00 for breach of performance.

If the Department finds it necessary to pursue legal action to recover monies owed by Licensee, Licensee shall also pay all court costs, attorney's fees, and other costs incurred as a result thereof.

7. **Funding Cancellation:** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this License, the License shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
8. This License may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Licensee of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Licensee shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Licensee shall be compensated for services herein provided but in no case shall total payment made to the Licensee exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

X. Notice to Parties

Whenever any notice, statement or other communication is required under this License it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:

Division Director
Division of State Parks and Reservoirs
402 W. Washington Street, W298
Indianapolis, Indiana 46204

- B. Notices to the Licensee shall be sent to:

- C. As required by IC 4-13-2-14.8, payments to the Licensee shall be made via electronic funds transfer in accordance with instructions filed by the Licensee with the Indiana Auditor of State.

Y. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this License shall be resolved by giving precedence in the following order: (1) This License, (2) attachments prepared by the State, (3) BAA #_____, (4) Licensee's response to BAA#_____, and (5) attachments prepared by the Licensee. All of the foregoing is incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

Z. Severability

The invalidity of any section, subsection, clause or provision of this License shall not affect the validity of the remaining sections, subsections, clauses or provisions of this License.

AA. Ethics

The Licensee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Licensee is not familiar with these ethical requirements, the Licensee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Licensee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Licensee. In addition, the Licensee may be subject to penalties under Indiana Code § 4-2-6-12.

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AB. Non-Collusion and Acceptance

The undersigned attests under penalties of perjury that (s)he is the Licensing party, or that (s)he is the representative, agent, member or officer of the Licensing party and that (s)he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that (s)he has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

IN WITNESS WHEREOF, the parties have caused this License and Concession Agreement to be executed.

LICENSEE:

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By _____

Printed Name: _____

Title: _____

Date: _____

Federal I.D. No.: _____

DEPARTMENT OF NATURAL RESOURCES

By: _____
For: Robert Carter Jr., Director

Date: _____

STATE BUDGET AGENCY

By: _____
For: Christopher D. Atkins, Director

Date: _____

DEPARTMENT OF ADMINISTRATION

By: _____
For: Robert Wynkoop, Commissioner

Date: _____

**APPROVED AS TO FORM & LEGALITY:
Office of the Attorney General**

By: _____
For: Gregory F. Zoeller, Attorney General

Date: _____